



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Paper No.

ROSEMARY AQUILA
607 72 STREET
NORTH BERGEN, NJ 07047

COPY MAILED

AUG 05 2004

OFFICE OF PETITIONS

In re Application of
Gert Sarlet, Peter Szabo,
Curt Orbert and Torbjorn Nyman
Application No. 10/666,850
Filing Date: September 18, 2003
Attorney Docket No. 1010.8131UU
Title: METHOD FOR CHARACTERIZING
TUNABLE LASERS

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is a decision on the "PETITION SUBMITTED UNDER 37 CFR 1.47(a)," filed May 17, 2004 (certificate of mailing May 11, 2004).

The petition is **DISMISSED**.

Rule 47 applicants are given **TWO MONTHS** from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 C.F.R. §1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 C.F.R. § 1.136(a).

The above-identified application was filed on September 18, 2003, with an unexecuted declaration, missing the statutory basic filing fee and with additional claim fees due. Accordingly, on December 11, 2003, the Office mailed a "Notice to File Missing Parts of Application," requiring, *inter alia*, an executed oath or declaration and the surcharge under § 1.16(e) for its late filing. This Notice set a two-month period for reply, with extensions of time obtainable under § 1.136(a).

Applicants replied with *inter alia* the instant petition under § 1.47; payment of the petition fee and of the late surcharge; and a declaration executed by joint inventor Curt Orbert on behalf of himself and on behalf of non-signing joint inventors Sarlet, Szabo and Nyman. This reply was made timely by an accompanying petition for an extension for response within the third month (and fee). Rule 47 applicant asserts that status under § 1.47 is proper because inventors Sarlet, Szabo and Nyman are unavailable to join in the application.

A grantable petition under 37 CFR § 1.47(a) requires: (1) an acceptable oath or declaration in compliance with 37 C.F.R.

§ 1.63 and 1.64 or 1.175; (2) proof that the non-signing inventor cannot be found or reached after diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. The petition included payment of the petition fee; a statement of facts intended to show unavailability of the non-signing inventors; and a statement of the last known addresses of the non-signing inventors.

The petition is not grantable because requirement (2) has not been satisfied. Petitioner states that the application papers were presented to all of the inventors by International Federal Express Delivery. Inventor Orbert submitted an executed declaration. No response was received from inventor Szabo. However, the Express Mail mailings to inventors Sarlet and Nyman were returned as undeliverable. It can be inferred that inventor Szabo's non-response constitutes a refusal to join in the application. However, no such inference can be made with respect to inventors Sarlet and Nyman.

Moreover, rule 47 applicant has not shown that inventors Sarlet and Nyman cannot be found or reached after diligent effort to be presented with all of the application papers. The petition does not include adequate evidence to support a conclusion that diligent efforts have been made to find or reach the inventors to have them join in this application. Having been unsuccessful in contacting the inventors by mail, there is no indication that Rule 47 applicant attempted to determine the inventors' forwarding addresses, and to send the application papers to those addresses for consideration. See MPEP 409.03(d). If attempts (reflecting diligence) to obtain a forwarding address or to locate the non-signing inventors by other means such as through E-mail, a new telephone number, or the Internet continue to fail, then applicants will have provided the necessary proof required under 37 CFR 1.47 that the inventor cannot be reached or found after diligent effort. Details of the efforts to locate the non-signing inventors should be set forth in an affidavit or declaration of facts by a person with first hand knowledge of the details. Applicants should also submit documentary evidence such as the results of E-mail or Internet searches.

Further correspondence with respect to this decision should be addressed as follows:

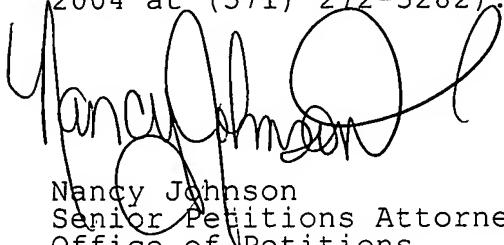
By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (703) 872-9306
ATTN: NANCY JOHNSON
SENIOR PETITIONS ATTORNEY

By hand: Effective June 5, 2004, patent correspondence delivered by hand or delivery services, other than the USPS, to the Customer Window must be addressed as follows:

U.S. Patent and Trademark Office
220 20th Street S.
Customer Window, Mail Stop
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

Telephone inquiries related to this decision may be directed to
the undersigned at (703) 305-0309 (or effective September 28,
2004 at (571) 272-3282).



Nancy Johnson
Senior Petitions Attorney
Office of Petitions